

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

DANNY WALKER,

Plaintiff,

v.

Case No. 2:20-cv-2374-MSN-cgc

SYSCO CORPORATION,

Defendant.

ORDER

Before the Court are the following motions: (1) Defendant's Motion for Attorneys' Fees (ECF No. 24 (sealed)); (2) Plaintiff's Unopposed Motion to Correct Scrivener's Error (ECF No. 28); (3) Defendant's Motion for Attorneys' Fees (ECF No. 29); (4) Defendant's Motion for Leave to File a Reply to Plaintiff's Opposition to Defendant's Motion for Attorneys' Fees (ECF No. 30); (5) Plaintiff's Motion for Attorney's Fees Against Defendant's Counsel Pursuant to 28 U.S.C. § 1927 (ECF No. 31); (6) Plaintiff's Motion for Attorney's Fees Against Defendant's Counsel Pursuant to 28 U.S.C. § 1927 [*corrected*] (ECF No. 32); and (7) Plaintiff's Unopposed Motion to Strike Docket Entry from the Record (ECF No. 33).

As evidenced by the above list of pending motions, a bit of housekeeping is in order. First, Defendant filed two motions for attorneys' fees that appear to be identical. Defendant does not explain why it refiled its motion, but it appears to be the exact same motion save redactions in the exhibits. The first motion was filed under seal, the second was not. This Court construes Defendant's second filed motion for attorneys' fees (ECF No. 29) as an amended motion that

replaces and supersedes in its entirety the earlier filed motion. Therefore, Defendant's Motion for Attorneys' Fees (ECF No. 24 (sealed)) is **DENIED AS MOOT**.

Second, when responding to Defendant's Motion for Attorneys' Fees, Plaintiff filed an "incorrect version" of his response that "contained minor typos that were not intended to be filed." (ECF No. 28 at PageID 320.) Plaintiff therefore filed an Unopposed Motion to Correct Scrivener's Error (ECF No. 28) and attached the correct version of his response. Plaintiff's motion is **GRANTED**, and this Court will consider his corrected response.

Next, Defendant filed a motion seeking leave to file a reply in support of its motion for attorneys' fees (ECF No. 30). Defendant avers a reply is necessary because "Plaintiff's Opposition mischaracterizes Defendant's critical fiduciary obligations to the Sysco Plan under ERISA, and mischaracterizes Defendant's request for fees in relation to Fed. R. Civ. P. 41(a)(1)(A)(i)." (ECF No. 30 at PageID 467.) This Court does not believe a reply is necessary, and Defendant's motion (ECF No. 30) is **DENIED**.

Finally, in filing his own motion for attorneys' fees, Plaintiff again initially filed an incorrect version of his motion that "contained highlighting that was not intended to be filed." (ECF No. 33.) To correct this error, Plaintiff re-filed his motion with the correct version attached (ECF No. 32) and then filed a Motion to Strike (ECF No. 33) seeking to have the incorrectly filed version stricken from the record. When considering Plaintiff's motion, this Court will consider the corrected version (ECF No. 32); however, this Court finds no reason why the previously filed incorrect version of the motion should be completely removed from the record in this matter. Accordingly, Plaintiff's Motion for Attorneys' Fees (ECF No. 31) is **DENIED AS MOOT**, and Plaintiff's Unopposed Motion to Strike Docket Entry from the Record (ECF No. 33) is **DENIED**.

After the above rulings, still pending before the Court are the following:

(1) Defendant's Motion for Attorneys' Fees (ECF No. 29), to which Plaintiff responded in opposition (ECF Nos. 27 (exhibits only) & 28).

(2) Plaintiff's Motion for Attorneys' Fees Against Defendant's Counsel Pursuant to 28 U.S.C. § 1927 (ECF No. 32), to which Defendant responded in opposition (ECF No. 34).

These remaining two motions will be addressed by the Court in a subsequent order or orders.

IT IS SO ORDERED, this 26th day of August 2021.

s/ Mark S. Norris

MARK S. NORRIS

UNITED STATES DISTRICT JUDGE